

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 11 May 2005

CASE NUMBERS: 2005-SDW-004
2005-SDW-005
2005-SDW-006

In the Matter of:

**GREGORY A. DANN,
LON A. FULLER, and
THOMAS J. KOSCIK,**
Complainants,

v.

**BECHTEL SAIC COMPANY, LLC, and
BECHTEL NEVADA**
Respondents.

**ORDER GRANTING COMPLAINANTS' MOTION TO RECOGNIZE BECHTEL
NEVADA AS A PROPER CO-RESPONDENT**

This case arises from complaints filed under the various whistleblower statutes by three members of the Plumbers and Pipefitters Union who were fired from their jobs by Bechtel SAIC Company on May 24, 2004. On August 17, 2004, a separate employer known as Bechtel Nevada sent a letter to Plumbers and Pipefitters Local 525 informing the local's business manager that all three Complainants were "not eligible for employment with Bechtel Nevada."

On September 16, 2004, Complainant Dann filed a complaint with the Occupational Health and Safety Administration (OSHA) on behalf of himself and the two other complainants. According to Dann's complaint letter, he and the other complainants were fired by Bechtel SAIC for raising safety concerns and for refusing to provide affidavits sought by Bechtel SAIC for use in connection with another employee's whistleblower case. Although Dann's letter did not specifically mention Bechtel Nevada, the letter did allege that there had been "blacklisting" and it appears that a copy of Bechtel Nevada's August 17, 2004 letter to Local 525 was attached to the complaint letter. In addition, on October 12, 2004, Dann sent OSHA a second letter in which he specifically alleged that "Bechtel" had sent his union a letter indicating that he was ineligible for re-hire. Likewise, on October 19, 2004, Complainant Lon Fuller sent OSHA a complaint in which he complained that on some unspecified date after August 12, 2004 he had learned from the Local 525 business agent that Bechtel Nevada had sent the union a letter saying he was ineligible for employment by that company.

Although the letters that Dann and Fuller sent to OSHA can fairly be interpreted as alleging that they have been blacklisted by Bechtel Nevada, it appears that OSHA limited its investigation to the allegations against Bechtel SAIC and did not consider Bechtel Nevada to be a separate employer. Consequently, after OSHA announced its findings in a letter dated February 7, 2005, the appeal letters that Dann and Complainant Koscik sent to the Office of Administrative Law Judges both asserted that OSHA had failed to investigate the allegations against Bechtel Nevada. In addition, on April 5, 2005, the counsel for all three complainants filed a motion asking that Bechtel Nevada be recognized as a proper respondent in this proceeding. A copy of this motion was served by mail on Bechtel Nevada's agent for service of process on April 21, 2005 but no response from Bechtel Nevada has yet been received.

Although Bechtel Nevada had failed to file a timely response to the Complainants' motion, Bechtel SAIC did file a response dated April 12, 2005. In essence, that response contends that joining Bechtel Nevada in this proceeding without first giving notice to Bechtel Nevada would violate that company's right to procedural due process and be inconsistent with the standard followed by the Administrative Review Board in its Final Decision and Order in *Ewald v. Commonwealth v. Virginia* (ARB Dec. 19, 2003). However, since the submission of Bechtel SAIC's response, the Complainants have in fact served Bechtel Nevada with notice of their request that Bechtel Nevada be joined as a respondent. Moreover, this proceeding is entirely *de novo* and is just beginning. Consequently, joining Bechtel Nevada as a party to this proceeding at this time will not infringe on any of Bechtel Nevada's due process rights.¹

A

Paul A. Mapes
Administrative Law Judge

¹ In this regard, it is noted that although a trial on the merits had initially been scheduled to commence on May 2, 2005, the notice setting forth that trial date and pre-trial discovery deadlines has been rescinded and replaced by a Revised Notice of Trial postponing the commencement of the trial to July 26, 2005. The revised trial notice also establishes all new pre-trial deadlines that will fully ensure the due process rights of all the parties, including Bechtel Nevada.